

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

DENNIS PETERSEN, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

CJ AMERICA, INC.,

Defendants.

Case No. 14-CV-2570 DMS JLB

**ORDER AWARDING ATTORNEYS'
FEES, COSTS, AND INCENTIVE
AWARD**

Date: September 30, 2016

Time: 1:30 p.m.

Judge: Hon. Dana M. Sabraw

Courtroom: 13A

1 1. This matter came before the Court on Plaintiff's Motion for Award of
 2 Attorneys' Fees, Costs, and Incentive Award. By separate order, the Court has
 3 determined that the proposed class action settlement reached by the Parties embodied in
 4 the Superseding Stipulation of Settlement is fair, reasonable and adequate and is finally
 5 approved.

6 2. The Court exercises diversity jurisdiction over this action pursuant to 28
 7 U.S.C. § 1332(d). *See Exxon Mobil Corp. v. Allapattah Services, Inc.*, 545 U.S. 546, 571
 8 (2005) ("CAFA confers federal diversity jurisdiction over class actions . . . [.]"). In
 9 diversity actions, "state law governs both the right to recover attorney's fees and the
 10 computation of their amount." *Collado v. Toyota Motor Sales, U.S.A., Inc.*, 550 Fed.
 11 Appx. 368, 369 (9th Cir. 2013); *Gezalyan v. BMW of North America, LLC*, 697 F. Supp.
 12 2d 1168, 1169 (C.D. Cal. 2010) (citing *Mangold v. California Public Utilities*
 13 *Commission*, 67 F.3d 1470, 1478 (9th Cir. 1995)). As Plaintiff's claims in this lawsuit
 14 are for alleged violations of California's consumer protection statutes, including the
 15 Consumers Legal Remedies Act, the False Advertising Law and the Unfair Competition
 16 Law, California state law has governed Plaintiff's claims in this action and thus applies to
 17 Plaintiff's motion for an award of attorneys' fees. *See Vizcaino v. Microsoft Corp.*, 290
 18 F.3d 1043, 1047 (9th Cir. 2002) ("Because Washington law governed the claim, it also
 19 governs the award of fees.").

20 3. Since the Court finds that Plaintiff is the prevailing party, has obtained
 21 meaningful monetary and injunctive relief for the Class and the public, the Court finds
 22 that Finkelstein Thompson LLP and Glancy Prongay & Murray LLP, Class Counsel, are
 23 entitled to a fee award in the amount of \$375,000.00.

24 4. The Court applies the percentage of the fund method for calculating fees to
 25 be awarded to Class Counsel. *Schiller v. David's Bridal, Inc.*, 2012 U.S. Dist. LEXIS
 26 80776, at *43 (E.D. Cal. June 11, 2012) ("California courts employ two methods when
 27 calculating a reasonable award of attorneys' fees in common fund actions," either the

1 calculation is based on a percentage of the common fund or it is based on the lodestar
 2 method.) Moreover, the Court notes that Plaintiff's request for 25 percent of the
 3 Settlement Fund is the benchmark and appropriate here. *See, e.g., Jones v. Bath & Body*
 4 *Works, Inc.*, 2016 U.S. Dist. LEXIS 89681, at *23 (C.D. Cal. July 11, 2016) "California
 5 has recognized that most fee awards based on either a lodestar or percentage calculation
 6 are 33 percent and has endorsed the federal benchmark of 25 percent." Additionally, the
 7 Court recognizes that a lodestar cross-check further establishes the reasonableness of
 8 Plaintiff's requested attorneys' fees. I have reviewed the sworn testimony of Rosemary
 9 M. Rivas and Marc L. Godino as to the work conducted by Class Counsel, the hourly
 10 rates and the lodestar and find they are reasonable. Here, 25% of the Settlement Fund
 11 represents a small multiplier of approximately 1.12 to Class Counsels' collective lodestar
 12 of \$334,433.75. This is well within the acceptable range of multipliers awarded in
 13 complex cases of this type. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051-
 14 54 (9th Cir. 2002) (upholding a 28% fee award that constituted a 3.65 lodestar multiplier,
 15 and noting that the majority of fee awards in the district courts in the Ninth Circuit are 1.5
 16 to 3 times higher than lodestar); *Roberti v. OSI Sys.*, 2015 U.S. Dist. LEXIS 164312, at
 17 *20 (C.D. Cal. Dec. 8, 2015) (granting a fee award amounting to approximately a 2.2
 18 multiplier). Therefore, the Court finds that the requested fee award is reasonable.

19 5. The Court also finds that the request for reimbursement of expenses in the
 20 amount of \$3,836.61 is reasonable as mandatory and discretionary costs pursuant to Cal.
 21 Civ. Proc. Code § 1033.5 and should be awarded. Accordingly, pursuant to Paragraph 54
 22 of the Superseding Stipulation of Settlement, Class Counsel shall be paid by Defendant
 23 through the Settlement Fund a total of \$338,270.36 for attorneys' fees and costs.


24 6. Furthermore, the Court finds that Plaintiff's request for an Incentive Award
 25 of \$5,000 is appropriate. The Court has the discretion to award the class representative,
 26 Mr. Dennis Petersen, a service payment for work he did on behalf of the Class and the
 27 amount Plaintiff requests is within range of what has been approved. *See Rodriguez v.*

1 *West Publ'g Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) (“Incentive awards are
2 fairly typical in class action cases.”); *see, e.g., Hopson v. Hanesbrands Inc.*, Case No.
3 CV-08-0844 EDL, 2009 WL 928133, *10 (N.D. Cal. Apr. 3, 2009) (“In general, courts
4 have found that \$5,000 incentive payments are reasonable.”); *Carter v. Anderson*
5 *Merchandisers, LP*, Case No. EDCV 08-0025-VAP OPX, 2010 WL 1946757, *4 (C.D.
6 Cal. May 11, 2010) (“Given the relatively small size of the proposed [\$5,000] recognition
7 payments, the Court thus approves the recognition payments requested for both Carter
8 and Lanasa”).

9 I have reviewed Plaintiff’s declaration and find that he should be awarded \$5,000
10 for his efforts.

11 **IT IS SO ORDERED.**

12 Dated: September 30, 2016

13 
14 Hon. Dana M. Sabraw
15 United States District Judge
16
17
18
19
20
21
22
23
24
25
26
27